

REPORTER'S RECORD

VOLUME 17 OF 35 VOLUMES

TRIAL COURT CAUSE NO. 1384794

COURT OF CRIMINAL APPEALS NO. AP-77,025

OBEL CRUZ-GARCIA) IN THE DISTRICT COURT
Appellant)
VS.) HARRIS COUNTY, TEXAS
THE STATE OF TEXAS)
Appellee) 337TH JUDICIAL DISTRICT

MOTION TO SUPPRESS

(CONTINUED)

On the 3rd day of July, 2013, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Renee Magee,
Judge presiding, held in Houston, Harris County, Texas;
Proceedings reported by computer-aided
transcription/stenograph shorthand.

A P P E A R A N C E S

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1 (Open court, defendant present, no jury)

2 THE COURT: We're back on the record in
3 Cause No. 1384794, the State of Texas vs. Obel
4 Cruz-Garcia. And present is Mr. Garcia at counsel table
5 and his lawyer, Mario Madrid. Present for the State is
6 Natalie Tise.

7 And we're ready to proceed on the Defense's
8 Motion to Suppress in which we began and heard evidence
9 in that case. It was back on June 19th, is when we
10 heard evidence on that. And I'm here to make my ruling
11 today and findings of fact.

12 All right. First off, I find by clear and
13 convincing evidence that the DNA evidence from the cigar
14 and the sexual assault kit of Diana Garcia and the test
15 results as determined by Orchid Cellmark Laboratory on
16 those items is sufficiently reliable and relevant to
17 assist the jury in accurately determining a fact issue
18 in this case and understanding other evidence presented
19 in this case.

20 And having said that, I did receive -- I
21 want to put on the record, I did receive a bench
22 memorandum from the State and I did receive several
23 cases in which they support their position on it. And I
24 have asked Mr. Madrid if they had any case law for me to
25 consider.

1 And, Mr. Madrid, do you want to put on the
2 record what your response was?

3 MR. MADRID: Correct. We don't have any
4 additional -- or any case law.

5 THE COURT: Okay. And so, in my ruling I
6 did read through and consider the case law on State vs.
7 Pope, cite is 161 S.W.3d 114; State vs. Valdez, 386
8 S.W.3d 324; Delbasco vs. State, 978 S.W.2d 236; and
9 Curtis vs. State, 205 S.W.3d 656.

10 So, I do find that the DNA evidence that
11 relates to Orchid Cellmark testing is sufficiently
12 reliable and relevant and is admissible.

13 I also find and make the following findings
14 of fact. That witness Eric Mehl, a sergeant with the
15 Houston Police Department; Matt Quartaro with Orchid
16 Cellmark; and Courtney Heard {sic} from the new HPD
17 Crime Lab are credible witnesses for purposes of this
18 hearing.

19 I did find that Mark Quartaro was a
20 qualified forensic supervisor and analyst with a
21 master's degree in molecular biology and currently works
22 for Cellmark Forensics, which was formerly known as
23 Orchid Cellmark Laboratory. I find him qualified to
24 perform the genetic testing that was referenced in this
25 hearing and to testify as to its results.

1 I also find that Courtney Heard was a
2 qualified criminal specialist with the new HPD Crime
3 Lab. And I find she is qualified to perform the DNA
4 testing referenced in the hearing and qualified to
5 testify about those results.

6 And just so the record is clear, I'm making
7 a finding that the new HPD Crime Lab is the Houston
8 Police Department Crime Lab's DNA serology lab as
9 reopened in 2007. And that the old HPD Crime Lab is the
10 Houston Police Department Crime Lab DNA serology section
11 that was closed in 2002. And prior to that closing,
12 that's all considered old HPD Crime Lab. And the time
13 period encompassing the offense in this case, September
14 of 1992.

15 I make a finding that the evidence that is
16 to be admitted regarding the DNA is one cigar, the cigar
17 found at the crime scene; one sexual assault kit taken
18 from Diana Garcia and collected by Gloria Kologinczok,
19 R.N., a SANE nurse and a J.D. Additional evidence is
20 certain samples of blood taken from Diana Garcia, Arturo
21 Garcia {sic} -- let's see--

22 MS. TISE: Candido Lebrom.

23 THE COURT: Yes. Candido Lebrom,
24 Bienviendo Melo, Leonardo German, and Carmelo Martinez.

25 The Motion to Suppress is denied based on

1 that evidence. That evidence is admissible. These
2 items as well as the test results from Orchid Cellmark,
3 in regards to these items will be admitted. Also
4 admitted is the test results of the new HPD Crime Lab
5 only in comparing the Orchid Cellmark's results to a
6 known sample of DNA taken from the defendant, Obel
7 Cruz-Garcia. Okay.

8 Further, I find that the cigar evidence was
9 stored at the HPD property room on Goliad Street on
10 October 1st, 1992, and was retrieved from that location
11 by Sergeant Mehl in October 2007. I find that the cigar
12 evidence was inside a larger container of evidence, was
13 taken to the old HPD Crime Lab sometime in 1992, but was
14 returned to the HPD property room and appeared to be
15 unopened by the HPD Crime Lab at the time it was
16 retrieved by Sergeant Mehl and mailed to Orchid Cellmark
17 Laboratory for DNA testing on October 2nd, 2007.

18 I find that the sexual assault kit from
19 Diana Garcia was taken by a qualified SANE nurse
20 previously described as Gloria Kologinczok, and
21 consisted of panties from Diana Garcia, several vaginal
22 swabs taken from Diana Garcia, and blood samples from
23 Diana Garcia. The sexual assault kit was sealed and
24 stored in the Houston Police Department property room
25 annex on the 24th floor of 1200 Travis. And that was in

1 1992.

2 I find that sometime in 1992, that sexual
3 assault kit was taken to the old HPD Crime Lab and
4 tested by Dr. B. Sharma. I find that Dr. Sharma took
5 cuttings from the panties in that sexual assault kit and
6 extracted DNA from the cutting that he retrieved from
7 those panties.

8 Further, I find that the DNA extracted by
9 Dr. Sharma was forwarded by Jim Bolding, head of the old
10 HPD Crime Lab, to Genetic Design Lab. And that is
11 another laboratory. And it was forwarded for DNA
12 testing back in 1992.

13 I find that neither the results of the
14 testing from the old HPD Crime Lab, nor the results from
15 the Genetic Design Lab are offered and they will not be
16 admitted. The sexual kit evidence was retrieved from
17 the Houston Police Department's property room annex on
18 the 24th floor of 1200 Travis in October 2007 by
19 Sergeant Eric Mehl, who retrieved it and observed that
20 it appeared to be sealed and it was sent to Orchid
21 Cellmark Laboratories on October 2nd, 2007.

22 Further, I find that blood samples from
23 several persons were collected in 1992 and were stored
24 at the Houston property -- excuse me -- Houston Police
25 Department property room annex on the 24th floor of 1200

1 Travis. Once again, those persons' names are Arturo
2 Garcia -- and that's the husband of Diana Garcia --
3 Mr. Candido Lebrom, Mr. Bienviendo Melo, Mr. Leonardo
4 German, and Mr. Carmelo Martinez. These blood samples
5 have been tested by the old HPD Crime Lab and were
6 returned to the Houston Police Department property room
7 sometime in 1992.

8 I find that the old HPD Crime Lab results
9 are not admissible on those blood samples. These
10 samples were retrieved by Sergeant Eric Mehl of HPD and
11 sent to Orchid Cellmark Laboratory on December 2nd,
12 2007. Testing performed by the Orchid Cellmark
13 Laboratory on these samples is admissible.

14 I find that the Orchid Cellmark Laboratory
15 analyzed the cigar evidence, the sexual assault
16 evidence, and the blood sample evidence, and one known
17 DNA sample from the defendant.

18 Breaking that down starting with the
19 sexual assault evidence, I find that Orchid Cellmark's
20 initial assessment of the evidence performed -- they
21 performed their own extractions from a cutting of the
22 panties of Diana Garcia that they obtained, which was a
23 different cutting than that used by the old HPD Crime
24 Lab. Orchid Cellmark performed their own DNA analysis
25 from their own extractions in order to obtain their own

1 DNA results. Orchid Cellmark obtained a full male DNA
2 profile from epithelial DNA cells left on the cigar
3 evidence. Orchid Cellmark obtained a mixture of three
4 DNA profiles from the cutting from Diana Garcia's
5 panties. One of these profiles was female and
6 belonged to D. Garcia. The other two profiles were male
7 profiles obtained from the semen fraction of the cells.
8 One of the male profiles was determined to be that of
9 Diana Garcia's husband, Arturo Garcia. The second
10 profile at that time, which was the main contributor to
11 the mixture, was an unknown male.

12 Orchid Cellmark's DNA analysis determined
13 that the profile of the unknown male, the semen fraction
14 from the panties, matched the unknown sample of the
15 epithelial DNA obtained from the cigar. All of the
16 known samples of DNA available at the time of the
17 initial testing, namely, Mr. Carmelo Garcia, Mr. Melo,
18 Mr. Lebrom, Mr. German were all excluded as being the
19 donors of the DNA -- the unknown DNA from the cigar and
20 panties.

21 One vaginal swab was tested by Orchid
22 Cellmark. Orchid Cellmark used a separate swab from the
23 one previously tested by the old HPD Crime Lab. The
24 results of the DNA from the swab is that the unknown
25 donor from the cigar and the panties could not be

1 excluded.

2 On May 23rd, 2008, Sergeant Eric Mehl
3 located the defendant, Obel Cruz-Garcia, in a Puerto
4 Rico jail. Sergeant Mehl worked with the FBI to obtain
5 a DNA sample by warrant. Sergeant Mehl received the
6 evidence of the known DNA sample of the defendant on May
7 23rd, 2008, and forwarded the evidence directly to
8 Orchid Cellmark Laboratories.

9 Prior to May 23rd, 2008, neither of the old
10 HPD Crime Lab, nor the HPD property room, nor Orchid
11 Cellmark -- or Orchid Cellmark had a DNA sample from the
12 defendant. Orchid Cellmark received the known sample of
13 the defendant's DNA in May 2008. They compared the
14 known DNA of the defendant against the cigar evidence
15 and the sexual assault kit evidence. Orchid Cellmark
16 found that the defendant's DNA could not be excluded
17 from the epithelial DNA found on the cigar. They
18 further found that the defendant's DNA could not be
19 excluded from DNA extraction found on the vaginal swab
20 and could not be excluded as a main contributor to the
21 DNA mixture obtained from the panty cutting.

22 Orchid Cellmark found that the DNA profile
23 of the defendant would be expected to be found in
24 roughly 1 in 71.5 quadrillion unrelated individuals.
25 Orchid Cellmark found no evidence of degradation in any

1 of the evidence from the old HPD Crime Lab. Orchid
2 Cellmark found no evidence of contamination on evidence
3 from the old HPD Crime Lab.

4 In October 2010, the defendant was in
5 custody in the Harris County Jail, having been
6 extradited from Puerto Rico. The defendant, Obel
7 Cruz-Garcia, consented to have a buccal swab taken from
8 his body. That buccal swab was obtained by an
9 investigator from the Harris County District Attorney's
10 Office and sent to the new HPD Crime Lab. The new HPD
11 Crime Lab, namely, Analyst Courtney Heard, extracted DNA
12 from the buccal swab and obtained a DNA profile of Obel
13 Cruz-Garcia.

14 Courtney Heard compared the known DNA of
15 the defendant to the evidentiary samples obtained from
16 Orchid Cellmark. Ms. Heard did not independently obtain
17 DNA profiles from the evidentiary samples, but rather
18 relied on the DNA profiles already obtained by Orchid
19 Cellmark. Upon comparison of those evidentiary samples
20 to the known sample of the defendant, the defendant
21 could not be excluded from the cigar evidence,
22 epithelial DNA, the sperm fraction of the vaginal swabs,
23 or the sperm fraction of the cuttings from the panties.
24 The results of the new HPD Crime Lab as to the
25 comparison is admissible and relevant.

1 I find that the old HPD Crime Lab
2 handled -- has not handled any of the evidence in this
3 case since 1994. I find that the old HPD Crime Lab's
4 DNA serology lab was closed in 2002.

5 I find that there is no evidence in this
6 case that any of the evidence in question, the DNA
7 evidence in question was stored in a manner or placed in
8 a location that is alleged to be subject to
9 contamination, mishandling, or malfeasance by the HPD
10 property room or the old HPD Crime Lab.

11 I find there was a report, termed the
12 Bromwich Report, which was initiated in 2003 upon the
13 closing of the crime lab. I find that this report
14 investigates and scrutinizes the Houston Police
15 Department Crime Laboratory and the storage of property
16 at the Houston Police Department. The report is an
17 extensive document covering hundreds of pages and is
18 made a part of the record for purposes of this hearing.
19 The report consists of Defense Exhibits 2 through 7 and
20 covers numerous areas of scrutiny, including toxicology
21 portion of the laboratory, ballistics portion of the
22 laboratory, trace evidence portion of the laboratory,
23 storage issues, serology, and DNA testing.

24 The report discusses case studies where
25 other fact scenarios and other actual cases are set out

1 and looked at in-depth to discuss errors that were made.
2 The report sets out facts and discussions of employees
3 at the HPD -- old HPD Crime Laboratory and discusses
4 disputes, allegations of misconduct, and potential
5 criminal activity. The report sets out certain issues
6 with the old HPD DNA serology section of the crime lab.
7 Those issues include deficiency in documentation of
8 procedures, mistakes in performing analysis of samples
9 containing mixtures of more than one person's DNA,
10 errors in calculating statistical probabilities,
11 mischaracterization of DNA results and testimony, lack
12 of established quality assurance and internal auditing
13 systems, inadequate resources, a technical leader with
14 inadequate qualifications, inadequate training program,
15 insufficient educational background for analysts, and
16 inadequate standard of operating procedures.

17 The Bromwich Report makes specific
18 recommendations to address these issues. All the
19 recommendations that were recommended by the Bromwich
20 Report were followed by the agency and by the State in
21 this case in order to remedy any potential issues. No
22 issues have been identified in the Bromwich Report or in
23 this hearing or in any discovery that the Court has been
24 made aware of that there were any concerns addressed in
25 those items regarding the evidence in this case.

1 Therefore, I find that the Bromwich Report
2 is not admitted, not to be mentioned or alluded to or
3 discussed, because it is irrelevant under 401 and 402.
4 And even if some portions may be relevant, its probative
5 value is substantially outweighed by the danger of
6 unfair prejudice, confusion of the issues, and
7 misleading to the jury. Therefore, Defense Exhibits 2
8 through 7 are not admissible at trial.

9 Defense also seeks -- seeks to admit
10 evidence, Defense Exhibits 8 and 9. This is evidence of
11 employee misconduct or criminal history of individuals
12 working in the old HPD Crime Lab. So, I am going to
13 address those one at time per each individual.

14 First, as to Joseph Chu. I find that
15 Joseph Chu was an employee of the old HPD Crime Lab.
16 Mr. Chu, according to the evidence in this case, did
17 nothing on this case except for the hair analysis. And
18 that evidence is not being offered and is not
19 admissible. So, if Mr. Chu is not being called as a
20 witness to testify, if that is true, Mr. Chu's nine
21 allegations of employee misconduct as a criminalist for
22 the HPD Crime Lab are not admissible.

23 I do find that in Defense Exhibit No. 9,
24 Mr. Chu, according to their own records, had allegations
25 of nine employee misconduct allegations. Of those, only

1 two were sustained. The others -- the other seven were
2 either unfounded, not sustained, or he was exonerated of
3 them. The two that were sustained, one was for
4 misconduct having nothing to do with this case, and
5 another was for an at-fault accident. I find that
6 impeachment of Mr. Chu would be improper if he is not
7 called as a witness and when his testimony and his test
8 results are not offered.

9 I also find that evidence of misconduct or
10 criminal history is not admissible under any theory,
11 608, 609 of the Texas Rules of Evidence. And is
12 irrelevant and prejudicial under 401, 402, 403, and 404.

13 As to Dr. Belda Sharma. I find that
14 Dr. Sharma is an old HPD Crime Lab employee and that he
15 did perform DNA analysis on the extractions in this case
16 from the old HPD Crime Lab in 1992. These results are
17 not offered and they are not admitted. Dr. Sharma is
18 not being called as a witness. And according to the
19 testimony, I find that he used an antiquated form of
20 analysis, a form different from the form that was used
21 by Orchid Cellmark to make their determinations as to
22 the DNA and the evidence in the case.

23 I do find, after reviewing Defense Exhibit
24 9, that Dr. Sharma had five instances of alleged
25 employee misconduct while at the old HPD Crime Lab.

1 Four of those instances were sustained. However, none
2 of those instances relate to the evidence in the case.
3 No allegation of criminal activity against Dr. Sharma or
4 Dr. Chu has ever been sustained. And I find that his
5 employee misconduct is not admissible under Rule 608 and
6 609 of the Texas Rules of Evidence and is irrelevant in
7 this proceeding, and is, therefore, inadmissible.

8 As to Deetrice Wallace, I find that
9 Deetrice Wallace was an employee of the old HPD Crime
10 Lab at the time the evidence was taken in this case.
11 The evidence supports that Deetrice Wallace received the
12 sexual assault kit in 1992 and screened a portion of the
13 sexual assault kit for blood evidence. However, she
14 performed no DNA analysis and no extractions on the
15 sexual assault kit evidence. And any testing that
16 Ms. Wallace performed on the evidence in this case is
17 not offered. Ms. Wallace will not be called as a
18 witness and any results from her testing are not
19 admitted. Ms. Wallace has no allegations of employee
20 misconduct while at the Houston Police Department old
21 crime lab. Ms. Wallace subsequently obtained a felony
22 allegation or conviction -- the record is unclear -- for
23 tampering with a government document while working at a
24 subsequent -- different laboratory approximately ten
25 years after she handled the evidence in this case. I

1 find it improper to impeach her with that criminal
2 history if she is not called as a witness and that that
3 criminal history is irrelevant to this case. I also
4 find that she had no instances of employee misconduct
5 alleged while she was at the Houston Police Department
6 Crime Lab.

7 And I find no evidence of mishandling,
8 contamination, malfeasance on the part of any of these
9 individuals, or on the part of the old HPD Crime Lab as
10 it relates to the evidence in this case as to what came
11 in our hearing.

12 Now, so that's my ruling on all of the
13 evidence that's sought to be admitted, but I will
14 allow -- so, I'm completely clear, I will allow
15 cross-examination on contamination issues by the
16 defense. I will allow cross-examination on the fact
17 that the evidence did go to the HPD Crime Lab and the
18 extensive history of where this evidence was, where it
19 was stored, where it was taken to, and whether those
20 locations were proper or whether they were -- whether it
21 was stored in a manner that was sealed or in a condition
22 that could have been contaminated. But I will not allow
23 the defense to go into the Bromwich Report or the
24 closure of the lab or the reasons for the closure of the
25 lab or the impeachment of the witnesses at the

1 laboratory that do not testify.

2 Okay? Do you have any questions or
3 anything?

4 MS. TISE: As far as the cross-examination
5 issues are concerned, if the State is not offering any
6 witnesses who have firsthand knowledge of the crime lab
7 issues, which is the case, we're not bringing anyone who
8 worked there at the time and would have firsthand
9 knowledge, I would object to the defense, basically,
10 asking questions that assume facts not in evidence to a
11 witness who doesn't have the firsthand knowledge to
12 address it.

13 THE COURT: Okay.

14 MS. TISE: I think --

15 THE COURT: Go ahead.

16 MS. TISE: -- the only proper way they
17 could get into any kind of contamination issues is to
18 bring their own witness who would have firsthand
19 knowledge to talk about it. And my witnesses are going
20 to say: I don't know. All I know is what I read in the
21 paper about the crime lab.

22 THE COURT: Okay.

23 MS. TISE: So, I'm just a little concerned
24 about cross-examination that might put facts in there --

25 THE COURT: I guess that would be something

1 you could object to at the time. If it assumes facts
2 not in evidence, that would be a proper objection. And
3 if it's a proper objection, I will sustain it. If it
4 goes without being objected, perhaps, they could go into
5 it, but I'm not going to shut them down completely on
6 being able to cross-examine on contamination and storage
7 issues. If they ask a witness that doesn't know, then
8 the witness can testify that they don't know.

9 MS. TISE: But in that situation, that's
10 exactly the situation I fear because they are going to
11 put evidence in front of the jury, through their
12 questions to a witness who is not qualified to -- you
13 know, who doesn't have the knowledge to respond to it.

14 THE COURT: Well, that would be assuming
15 facts not in evidence. If they are going to start
16 putting facts that aren't out there and just asking them
17 to agree, then that would be assuming facts not in
18 evidence. So, I guess you could object.

19 MS. TISE: And I'd ask for a motion in
20 limine at this time to prevent them from doing that,
21 that at the very least we need to establish -- maybe by
22 taking witnesses on voir dire -- of whether they have
23 the knowledge that the defense is going to seek to
24 elicit.

25 THE COURT: We can take the witnesses on

1 voir dire ahead of time. I'm not going to give you a
2 running objection as to -- because I don't know what
3 they are going to ask them on cross-examination. They
4 can't go into the Bromwich Report, they can't go into
5 the closure of the laboratory, and they can't go into
6 the impeachment of those witnesses, but I am going to
7 give them some latitude on contamination issues just
8 because I think that it's the fair thing to do in terms
9 of evidence that's -- number one, I think that's always
10 available to them. And number two, in terms of evidence
11 that's 20 years old that's been sitting somewhere for 20
12 years, I think they have the right to ask some questions
13 about that.

14 MS. TISE: And I don't disagree with that
15 at all, Judge. I'm just asking they be required to do
16 it through permissible means, means where they are
17 putting their own witness on the stand who is going to
18 be able to testify to things from firsthand knowledge.
19 Because, otherwise, we have the exact situation that we
20 had in Curtis where they're trying to get something in
21 through witnesses who actually didn't have personal
22 knowledge of those things, and, basically, back-dooring
23 and getting it in. And that leaves us in the position
24 of not really being able to adequately respond to it.

25 THE COURT: Okay. So, let's deal with it

1 this way. I've made my ruling. As it comes up at
2 trial, if we need to have the jury step out and have a
3 situation where we put something on the record to either
4 go into what a witness knows so we know we're not just
5 going to, you know, have the defense go on and on about
6 things that they don't know, and, basically, testifying
7 for the witness, or if you feel it's improper and we can
8 put something on the record and make an objection that's
9 specific to that witness and we feel that it's going
10 down the wrong path, then we can address it at that
11 time. But I can't guess at everything that's going to
12 be asked or everything that's going -- where we're going
13 to go from there, you know. I've got to give the
14 defense some latitude in addressing their defense.

15 So, do you have any questions, Mr. Madrid?

16 MR. MADRID: No, no. I think that's clear.
17 I was just thinking in my head, while you're saying all
18 of this, something that would affect, obviously, where
19 was that stored. And we're a little worried even at
20 Orchid Cellmark. We could go into a little bit of where
21 it was stored at and the chain of custody and it has
22 this tag, you know. That's what normally people would
23 testify to.

24 THE COURT: Right.

25 MR. MADRID: Going back to Detective Mehl,

1 where was it taken to. And I am talking out loud
2 because I can see what Ms. Tise is saying, something to
3 the effect that, well, we took it down to the crime lab.
4 Well, who did you take it to? Okay. And where did it
5 go then? And there's kind of a gap in between that,
6 right?

7 So, we'll try to structure our questions
8 where, obviously, we're not going to say, you know,
9 Joseph Chu touched it. And he's not testifying, so we
10 can't talk about that. Dr. Sharma, or whoever. Okay.
11 So, I understand that, but I guess we'll kind of -- I
12 agree with you and just ask that we can kind of -- give
13 us some latitude, but at the same time we're not --

14 THE COURT: Detective Mehl seemed to know
15 quite a bit about where it was and where it had been
16 during the time period.

17 MR. MADRID: It went to Goliad. That's why
18 if we completely shut that down, then we can't really
19 ask those questions.

20 THE COURT: Exactly. I'll allow them to go
21 into that; where it was stored for that period of time
22 or where they believed it was stored, get tags or
23 whatever. You know, I'm not going to let you get into
24 leaky roofs and stuff like that, that didn't apply to
25 this case. But, clearly, I think the jury has the right

1 to know where it was this entire time, and, you know, if
2 it was kept in a manner that was properly stored and if
3 it wasn't contaminated. And I think the scientists can
4 address it to a certain extent, too, in looking at the
5 evidence. They can't say: Hey, I know this was
6 contaminated or I know it wasn't contaminated or -- but
7 looking at evidence and they're able to see whether it's
8 degraded or not, they may be able to say that it had to
9 be stored properly because of the way that it appears at
10 the current time, you know. So, we can address it in
11 that way.

12 MR. MADRID: Quick question. This is what
13 I was thinking. I don't think this will happen, but I
14 can see a scenario where, you know, say the question
15 were asked: Well, why isn't it there anymore? Now,
16 that's -- well, because it was closed, but we can't talk
17 about that. Correct?

18 THE COURT: I don't want you to go into the
19 fact that the HPD Crime Lab was closed.

20 MR. MADRID: Just, it was sent to Orchid
21 Cellmark to do the testing and it was compared with the
22 present analyst, right?

23 THE COURT: Correct.

24 MR. MADRID: Okay.

25 THE COURT: None of the stuff from the old

1 crime lab is admissible. And so, just the fact that it
2 was stored there and the fact that it went there. I
3 will allow you to go into the fact that it actually did
4 go to the HPD Crime Lab at some point, but not that --
5 we're not going to go into any of the testing or who
6 tested it or anything like that. Okay?

7 MR. MADRID: Okay.

8 THE COURT: And so, I think we'll be able
9 to deal with it pretty quickly. If you make an
10 objection, if you think it's going down the wrong path,
11 Ms. Tise, make an objection, I will take the jury out,
12 and we'll deal with it that way.

13 MS. TISE: Okay.

14 THE COURT: All right. Then we're
15 adjourned for today. See you on Monday.

16 MR. WOOD: Judge, we were going to ask --
17 and you may have covered this before I got here -- as
18 far as timing goes when we're lining up our witnesses
19 and telling them -- did y'all talk about that?

20 MS. TISE: No, we haven't.

21 THE COURT: We'll go off the record.

22 (Proceedings recessed)

23

24

25

REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

I, Mary Ann Rodriguez, Official Court Reporter in
and for the 337th District Court of Harris County, State
of Texas, do hereby certify that the above and foregoing
contains a true and correct transcription of all
portions of evidence and other proceedings requested in
writing by counsel for the parties to be included in
this volume of the Reporter's Record, in the
above-styled and numbered cause, all of which occurred
in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of
the proceedings truly and correctly reflects the
exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the 3rd day of
October, 2013.

/s/ Mary Ann Rodriguez
Mary Ann Rodriguez, Texas CSR 3047
Expiration Date: 12/31/2013
Official Court Reporter
337th Court
1201 Franklin
Houston, Texas 77002
713.755.7746

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